

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICK J LAVIN
Claimant

INTEC SERVICES INC
Employer

APPEAL 16A-UI-12001-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/09/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 2, 2016 (reference 03) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on December 28, 2016. The claimant, Nick J. Lavin, participated personally. The employer, Intec Services Inc., participated through Robert Bella and Amy Rittenhouse.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time seasonal laborer. He worked Monday through Friday each week, unless it rained during the week and then he would work on Saturdays. He began working for this employer on August 1, 2016 and his last day physically worked on the job was October 5, 2016. His job duties included digging holes around electrical poles for the purposes of inspection. His immediate supervisor was Robert Bella.

On Wednesday, October 5, 2016 claimant became ill at work. Mr. Bella drove claimant to the hospital. Claimant was informed by medical staff that he needed a medical procedure performed. Claimant had the medical procedure performed the following day on Thursday, October 6, 2016. Claimant telephoned Mr. Bella and reported that the medical procedure was complete. Claimant wanted to work on Friday, October 7, 2016; however, Mr. Bella convinced claimant to stay home and rest. Claimant did not work on Friday, October 7, 2016.

On Monday, October 10, 2016 Mr. Bella called claimant to see if he was ready for work. Claimant did not know whether or not he was supposed to report to work on Monday, October 10, 2016 because Mr. Bella had not telephoned him over the weekend as Mr. Bella had

promised he would do. Claimant was not ready for work and told Mr. Bella that during their telephone conversation. Mr. Bella said that he would see him tomorrow and hung up. Claimant then texted Mr. Bella back and stated “well I’ll just take that as you firing me – so have fun Bob – I am filing for unemployment today.” Then Mr. Bella texted back to claimant “Be there in 5 minutes – be ready or I will see you tomorrow – you are not getting laid off.” Then claimant texted a statement back to Mr. Bella which was “bye.”

The following day on Tuesday, October 11, 2016 Mr. Bella again tried to call the claimant. There was no answer. Mr. Bella then texted the claimant the statement of “are you working today?” There was no response to Mr. Bella’s text and this was the last attempted conversation the employer had with the claimant.

There was continuing work available if claimant had not voluntarily quit his employment. Claimant was not going to be discharged or laid off for lack of work. He had no prior discipline during the course of his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. “Misconduct” is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's

duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The decision in this case rests, at least in part, upon the credibility of the parties. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* The administrative law judge concludes that Mr. Bella's testimony is more credible than that of the claimant.

It must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

A claimant who confronts his employer and demands that he be discharged and is subsequently discharged actually quits his employment. Job insurance benefits "are not determinable by the course of semantic gymnastics." *Frances v. IDJS*, (Unpublished Iowa App 1986). Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer. *LaGrange v. Iowa Department of Job Service*, (Unpublished Iowa Appeals 1984).

A preponderance of the evidence establishes that the claimant intended to quit and he carried out that intention by failing to come to work for any further scheduled shifts. It was clear from Mr. Bella's text message that claimant was not being laid off or discharged from employment.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in

particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

In this case claimant refused to come back to work. Iowa Admin. Code r. 871-24.25(27) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

Claimant's leaving the employment was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The November 2, 2016 (reference 03) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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